

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 18.07.2019

Order pronounced on 11.12.2019

CRA No. 3198 of 1999

Somai son of Thurai @ Hinchharan Choudhary, aged 26 years,
Agriculturist, resident of Village Bawarwar, PS Pendra, District
Bilaspur, MP (Now CG) **-- Appellant**

Versus

State of MP (Now CG)

-- Respondent

For Appellant	-	Mr. Rakesh Pandey and Mr. Dashrath Prajapati, Advocates
For respondent/State	-	Ms. Shriya Mishra, PL

Hon'ble Smt. Vimla Singh Kapoor, J.

CAV Order

FIR (Ex.P-1) lodged by the prosecutrix (PW-1) – a married lady and mother of two children, goes to show that on 24.02.1999 she, her husband and children had gone to attend a marriage in the same village and that after sometime she and her children got back home whereas her husband remained there for some more time. It is alleged that the accused/appellant came to her house and asked for a pot to get liquor from outside. After she handed over the pot to the accused/appellant he went away and about an hour thereafter when she was sleeping in her room, he again came to her house, put out the lamp, threw her down and committed forcible sexual intercourse with her. It is further alleged that while resisting the act of the accused/appellant, the bangles worn by her broken and she also received nail scratches on her nose. It is further alleged that after committing sexual intercourse with her the accused/appellant ran away and that after her husband returned home she narrated the entire incident to him and on the

next day FIR (Ex.P-1) came to be lodged on the basis of which offences under Sections 456 and 376 IPC were registered against the accused/appellant. After medical examination of the prosecutrix and completion of investigation charge sheet was filed against the accused/appellant under Sections 450 and 376 IPC followed by framing of charge accordingly.

2. Learned Court below vide judgment impugned dated 18.11.1999 passed in Sessions Trial No.122/1999 convicted the accused/appellant under sections 376(1) and 450 IPC and sentenced him to undergo RI for 7 years with fine of Rs.500 for each offence, plus default stipulations. Hence this appeal.

3. Counsel for the accused/appellant submit that the findings recorded by the Court below are contrary to the evidence of the witnesses in particular that of the prosecutrix but even then the Court below has held the accused/appellant guilty for committing rape on her. They further submit that even the medical evidence does not support the case of the prosecution. According to them, since number of contradictions and omissions are there in the evidence of PW-1 and PW-2, the judgment impugned convicting and sentencing the accused/appellant is liable to be set aside.

4. State counsel however supports the judgment impugned and submits that the trial Court has not committed any error while recording the finding convicting and sentencing the accused/appellant as described above as the prosecutrix has duly supported the case of the prosecution stating as to in what manner the accused/appellant came inside her house and committed forcible sexual intercourse with her. She submits that while resisting the act of the accused/appellant she suffered abrasions on her nose which has duly been corroborated by the medical evidence also.

5. Prosecutrix (PW-1) has categorically stated that the accused/appellant first came to her house and after taking a pot for getting liquor he went away. After sometime he again came there and while she was sleeping in her room, he threw her down and committed forcible sexual intercourse with her in spite of the resistance so offered. According to the prosecutrix, in the struggle made by her, the bangles worn by her were broken and she received nail scratches on her nose. She has further stated that she knew the accused/appellant earlier also as being in relations he used to visit her house time and again. PW-2 – the husband of the prosecutrix has also supported the case of the prosecution stating that after he returned home from the place of the marriage the prosecutrix was found weeping and on being asked she told him that she was subjected to forcible sexual intercourse by the accused/appellant and that in the resistance offered by her the bangles were broken. The broken bangles lying on the spot were seen by him and that the nail scratches were present on the nose of the prosecutrix. Dr. Nalini Singh (PW-5) who medically examined the prosecutrix (PW-1) has stated that she was habitual to sexual intercourse and that on her nose two abrasions were noticed by her. The report given by this witness is Ex.P-8. According to this witness, the petticoat of the prosecutrix was also stained with semen like substance. Another doctor (PW-4) who medically examined the accused has given his report Ex.P-6 and found him to be capable of performing sexual intercourse. This witness too has stated that he found brown colour spots on the underwear of the accused/appellant. Both PW-5 and PW-4 recommended for chemical examination of the petticoat of the prosecutrix and underwear of the accused containing certain spots, however, there is no FSL report on record. PW-8 is the witness in whose house the marriage was being performed, has stated that he was informed by PW-2 that the accused/appellant entered his house and

humiliated his wife (the prosecutrix). Petticoat of the prosecutrix and the broken pieces of bangles were seized under Ex.P-3 and Ex.P-12 which have duly been supported by PW-7. Investigating Officer (PW-10) has duly supported the case of the prosecution.

6. The aforesaid discussion thus goes to show that the accused/appellant committed the crime in question by entering the house of the prosecutrix and exploiting her physically against her will and without her consent. The conduct of the prosecutrix in narrating the incident to her husband and then lodging the report the very next day shows her victimization at the hands of the accused/appellant. The prosecutrix has been fully consistent in making statement with respect to her victimization right from the beginning up to the cross-examination in the Court and there is no variation in the same. Injury found on her nose and seizure of broken pieces of bangles also support the case of the prosecution. The evidence on record is thus sufficient to hold the accused/appellant guilty under Sections 376 and 450 IPC and being so the view taken by the Court below does not require any interference in this appeal.

7. There is no substance in the appeal and therefore, it is hereby dismissed and the judgment impugned is hereby upheld. Accused/appellant is reported to be on bail and therefore, his bail bonds stand cancelled and he is directed to be sent to jail forth-with for completing the sentence imposed on him.

Sd/-

(Vimla Singh Kapoor)

Judge